

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DANIEL KLEEBERG, LISA STEIN
and AUDREY HAYS,

Plaintiffs,

v.

Civil Action No. 16-CV-9517-LAK-KHP

LESTER EBER, ALEXBAY, LLC f/k/a
LESTER EBER, LLC, ESTATE OF
ELLIOT W. GUMAER, JR.,
EBER BROS. & CO, INC.,
EBER BROS. WINE AND LIQUOR CORP.,
EBER BROS. WINE & LIQUOR METRO, INC.,
EBER CONNECTICUT, LLC, and
WENDY EBER,

Defendants.

CANANDAIGUA NATIONAL BANK & TRUST
COMPANY,

Intervenor- Plaintiff,

v.

**EBER DEFENDANTS' ANSWER
TO INTERVENOR COMPLAINT**

Civil Action No. 16-CV-9517-LAK-KHP

LESTER EBER, ALEXBAY, LLC f/k/a
LESTER EBER, LLC, ESTATE OF
ELLIOT W. GUMAER, JR.,
EBER BROS. & CO, INC.,
EBER BROS. WINE AND LIQUOR CORP.,
EBER BROS. WINE & LIQUOR METRO, INC.,
EBER CONNECTICUT, LLC, WENDY EBER,
DANIEL KLEEBERG, LISA STEIN and
AUDREY HAYS,

Intervenor- Defendants.

Defendants and Intervenor-Defendants, Lester Eber, Alexbay, LLC f/k/a Lester Eber, LLC, Eber Bros. & Co., Inc., Eber Bros. Wine and Liquor Corp., Eber Bros. Wine & Liquor Metro, Inc., Eber Connecticut, LLC, and Wendy Eber (collectively the "Eber

Defendants”), as and for their answer to Intervenor-Plaintiff’s Complaint, by their attorneys, Underberg & Kessler LLP, respectfully state the following:

1. Admit the allegations contained in paragraphs 1, 4 and 5 of Plaintiff-Intervenor’s Complaint.

2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 2, 3, 7, 8, 9, 10, 12 and 13 of Plaintiff-Intervenor’s Complaint.

3. Deny the allegations contained in paragraphs 6, 11, and 14 of Plaintiff-Intervenor’s Complaint.

4. With respect to the allegations in paragraph 15 of Plaintiff-Intervenor’s Complaint, the Eber Defendants neither admit nor deny the allegations contained therein as they pertain only to the interests of Plaintiff-Intervenor.

5. Deny each and every allegation in Plaintiff-Intervenor’s Complaint not already admitted, denied or otherwise controverted.

FIRST AFFIRMATIVE DEFENSE

6. Plaintiff-Intervenor’s Complaint fails to state a cause of action for which relief may be granted against the Eber Defendants.

SECOND AFFIRMATIVE DEFENSE

7. The relief requested in Plaintiff-Intervenor’s Complaint is barred by the doctrines of waiver, laches and/or estoppel.

WHEREFORE, The Eber Defendants respectfully request an Order directing Plaintiff-Intervenor to deliver all Eber Bros. & Co. Inc. capital stock to Lester Eber and for such other and further relief as the Court may deem just and proper.

DATED: May 13, 2019

UNDERBERG & KESSLER LLP

By:



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Colin D. Ramsey, Esq.

Jillian K. Farrar, Esq.

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